

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

MICHAEL OSIRIS BOYD,

Case No. 20-CV-1505-PAM-KMM

Plaintiff,

v.

REPORT AND RECOMMENDATION

PAT CARR, BRIAN FRANK, DAVE
ISAIS, CHRISTOPHER BLOOM,
THOMAS ZERWAS, MARK FRITEL,
and BRYAN BJERGO,

Defendants.

In an order dated July 6, 2020, this Court ordered Plaintiff Michael Osiris Boyd to “pay an initial partial filing fee of at least \$62.23.” *See* Order 4, ECF No. 3 (“July 2020 Order”). The Court gave Mr. Boyd twenty days from the Order’s date—that is, until July 26, 2020—to pay that fee, failing which the Court would recommend dismissing this action without prejudice for failure to prosecute. *See id.*; Fed. R. Civ. P. 41(b). On July 28, 2020, the Court learned from a phone call with Mr. Boyd that his address had changed; the Court also received written notice of the address change on August 3, 2020. *See* Letter from Michael Osiris Boyd to Court, ECF No. 4. The Court sent a copy of the July 2020 Order to Mr. Boyd’s new address on August 4, 2020.

As of today’s date, Mr. Boyd has yet to pay his initial partial filing fee. The Court has no reason to believe that Mr. Boyd has not received a copy of the July 2020 Order, and Mr. Boyd has not communicated with the Court at all concerning the fee.

Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”). Furthermore, the Court also recommends that Mr. Boyd’s motion to proceed in forma pauperis (ECF No. 2) be denied as moot.

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.
2. Plaintiff Michael Osiris Boyd’s Application to Proceed in District Court Without Prepaying Fees or Costs, ECF No. 2, be **DENIED** as moot.

Date: September 1, 2020

s/ Katherine Menendez

Katherine Menendez

United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being

served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).